Remarks of
The Honorable Thomas N. Downing
To
Virginia Commonwealth's Attorneys Association
Saturday, August 9, 1975, 7:00 P.M.

As everyone in this country knows so well, Lee Harvey Oswald was never brought to trial. As literally millions of Americans watched on television, he was gunned down by Jack Ruby in the basement of the Dallas Police Station, less than 48 hours after the murder of John Kennedy. As a result, no prosecutor was faced with the problem of prosecuting Lee Harvey Oswald for the first degree murder of President Kennedy. However, it is a most interesting exercise for prosecutors to look at the theoretical situation with which a district attorney would be faced if Oswald had not been himself murdered and if he had been brought to trial.

As a prosecutor, what would you have going for you? In a warehouse building along the parade route, near the scene of the crime, the police found a Mannlicher-Carcano rifle which had been purchased through the mail by Oswald. Three cartridges which had been fired by that gun were found on the sixth floor of this warehouse, the Texas School Book Depository. A nearly perfect bullet which might have been fired from the Mannlicher-Carcano was found on a stretcher in the hospital to which President Kennedy and Governor Connally were taken for emergency treatment. That in essence is all of the positive evidence linking the suspect to the crime.

But even this evidence has its weak spots. For example, there is no clear record, despite the fact that Oswald worked in the Texas School Book Depository, of how or when the gun was taken into the building. There is also considerable evidence that a second rifle, a 7.65 Mauser, was also taken from the building by the police. There is no way of knowing when the cartridges had been fired in the Mannlicher-Carcano; they could easily have been fired at an earlier time and placed in the building. Although the Pristine bullet found in the hospital appears to have been fired from the gun, there is no clear evidence whatever as to how it got onto a stretcher in Parkland Hospital. And now let's look at what a defence attorney would have going for him in this same case.

1: Despite a multitude of people in Dealey Plaza, no creditable witness could be found that saw anyone firing a rifle. It should be noticed in passing that, despite this total lack of eye witnesses, a rather good physical description of the alleged murderer went out over the Dallas Police radio 14 minutes after the last shot rang out. The description matched Lee Harvey Oswald, but no one has explained how the police at that time had any idea for whom they were looking.

2: The great majority of spectators believed that the shots came from in front of the President's car, from a place generally called the grassy knoll. The police officers riding along side

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the Presidential car dropped their motorcycles and rushed to this area.

3: Approximately 90 seconds after the last shot was fired, Lee Harvey Oswald was found on the second floor of the School Book Depository, drinking a coca cola. If, in fact, he was the assassin, in that 90 seconds he would have had to conceal his gun, cross the whole width of the large warehouse, descend five flights of stairs, find a dime, gotten his coca cola, open it, and calmly begin to drink it. This sounds more like a Decathlon champion than Lee Harvey Oswald.

4: The Mannlicher-Carcano is a very cheap ($19.95) surplus World War Two Italian carbine. It is a bolt action, single shot, fourth-rate gun, hardly the type that any serious assassin would even consider.

5: There is no trace of the source of the ammunition used in the murder. The Italians quit manufacturing ammunition for the Mannlicher-Carcano during the closing years of World War Two. Any of this old ammunition would be highly unreliable. The only known source of new ammunition for the gun was the United States Government. It has never been determined from which source the assassin actually obtained the ammunition.

6: For the Mannlicher-Carcano to be fired three times in six seconds, the use of a clip is almost imperative. Yet, no clip was ever found.

7: The telescopic sight on the rifle was defective. At the range it was being fired in Dealey Plaza, it was off approximately eleven inches...an almost fatal flaw in itself under the circumstances.

8: The FBI's ballistic tests on the bullet fragments taken from President Kennedy, from Governor Connally, from the automobile, etc., were inconclusive. In effect, there was no positive evidence connecting the bullets with the alleged assassin's gun.

9: A paraffin test was made on Oswald's right cheek and it turned out negative, indicating that he had probably not fired a rifle that day.

On top of this rather evidential situation, you would also be faced with a number of most serious Constitutional defects. First and foremost, Oswald was questioned for a total of 13 hours during his 45 hour detention. Despite his requests for legal assistance, he was never furnished with a lawyer. Lawyers from the Civil Liberties Union who volunteered were turned away. Yet, the questioning went on. The Dallas Police Force has given sworn testimony that there is not one scrap of evidence as to what Oswald said during the 13 hours of interrogation. According to the police, they did not own a tape recorder. Further, they did not even bother to have a stenographic record of the interrogation. More incredibly, they say that no notes were taken. It is difficult to believe that any judge or jury...with the exception of the Warren Commission...would

accept such statements as true.

There was massive tampering with evidence. Despite a Dallas ordinance that an autopsy must be performed by the coroner in cases of violent death, no autopsy was performed in Dallas. Despite the protests of local authorities, the body of President Kennedy was forcibly removed to Bethesda, Maryland, where a grossly inadequate autopsy was performed by three military pathologists with little, if any, forensic experience. On top of this, the contemporaneous notes of the chief surgeon were later burned by him in the fireplace of his recreation room...he later swore that he did not think they were important. Many of the x-rays and photographs which would normally be taken during a competent autopsy were found not to exist.

The car in which the President was riding at the time of his death, was completely dismantled by the Secret Service and all evidence relating to it was destroyed. Most of Oswald's physical possessions were seized by the police without a search warrant. Oswald's wife, who apparently had nothing to do with any crime, was held in "protective custody" for a number of months. For all practical purposes, she was held incommunicado.

Until now, I have been discussing the problem of a prosecution of Oswald, not necessarily as the sole assassin of President Kennedy, but merely someone who may have played a role in the assassination. As we know, the Warren Commission insisted most strongly that Oswald was unassisted in his commission of the crime. What new problems would be raised if it were necessary to prosecute Oswald as the lone-nut killer? Is there any way in which a prosecutor could convince a jury that he and he alone had committed the act?

Let us go back for a moment to the Zapruder film of which I spoke earlier. Knowing that the film in Mr. Zapruder's camera ran at 18.3 frames per second, it is possible to determine very accurately the time frame in which all the shooting took place. It is known... and the Warren Commission concurs...that 5.6 seconds elapsed between the first shot and the final shot which hit John Kennedy in the head. For practical purposes, let's round this off to six seconds. Now remember that this is a single shot, bolt action rifle. After each shot a cartridge had to be ejected by the bolt, a new bullet put into place and the gun re-aimed. Some of the world's finest riflemen have practiced with the Mannlicher-Carcano but none have been able to re-load, re-aim and fire accurately in less than three seconds. This means that in the time frame for the firing, a maximum of three shots could have been fired from the Mannlicher-Carcano, the initial shot plus two re-loads. Realizing these limitations, and insisting that only a single gunman was involved, the Warren Commission insisted that all of the damage done during the fusillade was done by three shots. The Warren Commission admits that one shot missed the target completely, striking the street curb. One shot hit President Kennedy in the head and disintegrated. That left only one shot which, for convenience sake, has often been labeled the "magic bullet".

According to the Commission, this shot entered President Kennedy's back, exited his Adam's apple, went through Governor Connally's chest,

broke a rib, went through Connally's wrist shattering it, and wound up in his thigh. This is the bullet which allegedly was found undamaged on a stretcher in Parkland Hospital. If the "magic bullet" is central to the whole contention that Oswald was a lone-nut killer, let's examine its feasibility.

If the shots fired by the murderer came from the sixth floor window of the School Book Depository, their course would have been downward and to the left. If a bullet had entered the President's back and exited his Adam's apple, it should have either hit Mrs. Connally who was sitting in front of the President and to the left. or harlmlessly struck the side or floor of the car. To have hit Governor Connally on his right side, when he was sitting directly in front of the President, the bullet would have to have made two 90 degree turns in mid air. From this evidence alone, it can be deduced that Governor Connally was not gravely injured by any of the bullets which struck President Kennedy, something which Governor Connally insists to this day. Furthermore, the "magic bullet" that was taken from the stretcher was pristine. The only lead missing from it was that removed by the FBI for tests. Yet, a great deal of lead was left in Governor Connally's chest and wrist where the bullet that struck him struck bone. Last but not least, if the bullet that entered President Kennedy's back was the same one which exited his throat and if it had been fired from "Oswald's window" it would have snapped the vertebrae in his neck.

From this mass of evidence, all serious critics including a number of eminent pathologists, criminologists, and lawyers have all concluded that there must have been at least four shots at Dealey Plaza. As no one has been able to fire the Mannlicher-Carcano four times in six seconds, we know that there was at least a second rifleman if the Carcano was used in the killing. This means a conspiracy. This means that the Warren Commission was wrong on its central thesis.

There are a number of other very disturbing aspects to this matter which are of particular interest to prosecutors. A huge amount of vital evidence was withheld from the Warren Commission. The FBI was deeply involved with this withholding of evidence. As an example, the Dallas Police turned over to the FBI an address book which belonged to Oswald. In it was one page which gave the name, address, telephone number and license plate number of an FBI agent in Dallas. The FBI removed this page from the book before turning it over to the Warren Commission. Eventually, the Warren Commission got the page but did not seem upset that it had been willfully withheld. The FBI also withheld most of the evidence which linked Jack Ruby to organized crime, to Cuban gamblers, to the narcotics trade, and last but not least, to the FBI itself. It has only recently been discovered that Jack Ruby was formerly enrolled as an FBI informant for quite a period of time.

Lee Harvey Oswald certainly was no hero and I am not trying to make him one, but I do not believe that he was the lone-nut assassin that the Warren Commission says he was. I do not know who was involved in the assassination of President Kennedy but I think it is time that all of us learned the truth. Our system of government cannot remain strong if our leaders can be murdered and the government itself consents to covering up the crime.